

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

EK VENTURES I, LLC; DAVID L.)
TAYLOR; DAVID L. TAYLOR AND)
VIRGINIA L. ATYLOR as TRUSTEES)
FOR THE TAYLOR FAMILY)
REVOCABLE TRUST; and) C.A. No. 03-CV-12506-MNG
FLEXTRONICS INTERNATIONAL)
LTD.,)
)
Plaintiffs,)
v.)
)
JAMES R. BARTLETT and Z.B.R.)
PUBLICATIONS, INC.,)
)
Defendants,)
and)
)
JAMES R. BARTLETT,)
)
Third Party Plaintiff,)
v.)
)
GLOBALWARE SOLUTIONS, INC.,)
ANTHONY RUDSTON and BRADELY A.)
JAY,)
)
Third Party Defendants.)
)

**DEFENDANT JAMES R. BARTLETT'S MOTION FOR LEAVE TO
FILE CROSS-CLAIM AGAINST DEFENDANT Z.B.R. PUBLICATIONS, INC.**

Defendant James R. Bartlett ("Bartlett") hereby moves for leave to file a cross-claim against co-defendant Z.B.R. Publications, Inc. Bartlett seeks to assert a cross-claim against defendant Z.B.R. Publications, Inc. for indemnification based, on provisions of its Articles Of Organization, and for contribution, based on the allegedly wrongful actions taken by Z.B.R.

Publications, Inc., including its employees and agents, other than Bartlett. A copy of Bartlett's proposed Cross-Claim is attached hereto as Exhibit A.

In further support of his motion, Bartlett respectfully refers the Court to his Memorandum In Support Of His Motion For Leave To File Cross-Claim Against Defendant ZBR Publications, Inc., which is submitted herewith.

Wherefore, Defendant Bartlett respectfully requests that this Court grant him leave to file his proposed Cross-Claim against ZBR Publications, Inc..

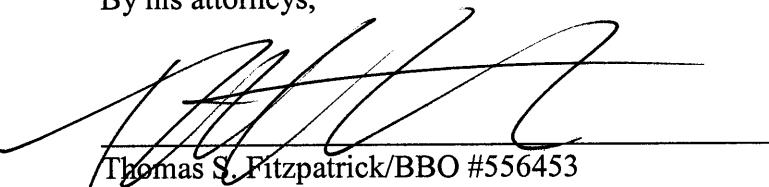
REQUEST FOR HEARING

Pursuant to Local Rule 7.1(D), Bartlett requests a hearing on his motion for leave to file a cross-claim against ZBR Publications, Inc..

Defendant,

JAMES R. BARTLETT

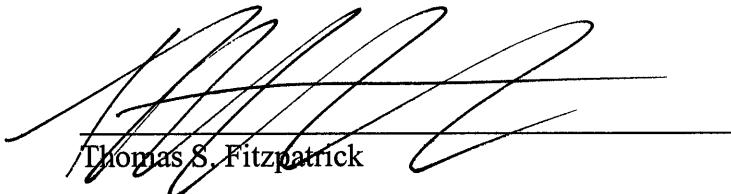
By his attorneys,



Thomas S. Fitzpatrick/BBO #556453
DAVIS, MALM & D'AGOSTINE, P.C.
One Boston Place, 37th Floor
Boston, MA 02108
(617) 367-2500

CERTIFICATION OF COMPLIANCE WITH LOCAL RULE 7.1(a)(2)

I, Thomas S. Fitzpatrick, hereby certify that on December 16, 2004, I had a teleconference with ZBR's counsel, David Ryan, during which we conferred and attempted in good faith to narrow the issue raised by the above motion.



Thomas S. Fitzpatrick

Dated: December 20, 2004

CERTIFICATE OF SERVICE

I, Thomas S. Fitzpatrick, hereby certify that on December 20, 2004, the above motion, was sent electronically to:

David F. Anderson danderson@lattianderson.com

Douglas R. Roach droach@groffmurphy.com

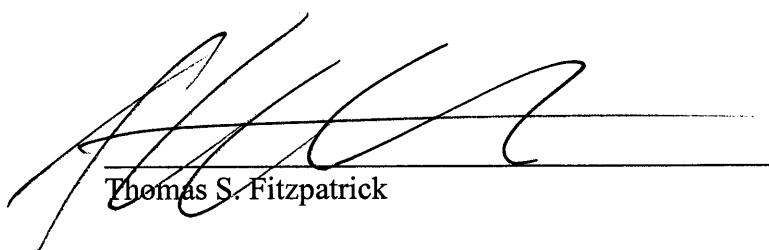
David M. Ryan dryan@nixonpeabody.com

Melissa B. Tearney mtearney@nixonpeabody.com

and by first class mail to:

Douglas R. Roach

Melissa B. Tearney



Thomas S. Fitzpatrick

EXHIBIT A

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Defendants,)
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JAMES R. BARTLETT,)
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Third Party Plaintiff,)
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GLOBALWARE SOLUTIONS, INC.,)
ANTHONY RUDSTON and BRADELY A.)
JAY,)
)
Third Party Defendants.)
)

**DEFENDANT JAMES R. BARTLETT'S CROSS-CLAIM
AGAINST DEFENDANT Z.B.R. PUBLICATIONS, INC. AND JURY DEMAND**

1. This is a cross-claim brought by defendant James R. Bartlett for indemnification against defendant Z.B.R. Publications, Inc., a/k/a GlobalWare Solutions Massachusetts, Inc., based on provisions of the Articles Of Organization of Z.B.R. Publications, Inc. and for

contribution, based on the allegedly wrongful actions taken by Z.B.R. Publications, Inc., including its employees and agents, other than Bartlett.

PARTIES

2. Defendant and cross-claim plaintiff James R. Bartlett ("Bartlett") is an individual residing at 672 Chestnut Street, Lynnfield, Massachusetts.

3. Defendant Z.B.R. Publications, Inc. is a Massachusetts corporation with a principal place of business at 200 Ward Hill Avenue, Haverhill, Massachusetts. On or about July 28, 2000, Z.B.R. Publications, Inc., amended its Articles Of Organization and filed with the Secretary of the Commonwealth of Massachusetts Articles Of Amendment changing the name of the corporation to "GlobalWare Solutions Massachusetts, Inc." For purposes of this pleading, defendant Z.B.R. Publications, Inc., a/k/a GlobalWare Solutions Massachusetts, Inc., is referred to herein as "ZBR."

4. During the period June 30, 1999 through June 30, 2003, and at other times, Bartlett served as an officer and director of ZBR.

5. On December 12, 2003, the plaintiffs in this action, E.K. Ventures I, LLC, David L. Taylor, and David L. Taylor and Virginia L. Taylor as Trustees for the Taylor Family Revocable Trust, commenced this against Bartlett and ZBR in the United States District Court for the District of Massachusetts (the "Lawsuit"), which includes claims allegedly arising, *inter alia*, from Bartlett's service as an officer and director of ZBR.

6. On January 9, 2004, plaintiffs amended their complaint in the Lawsuit to include an additional named plaintiff, Flextronics International, Ltd.

7. On March 18, 2004, plaintiffs filed the Second Amended Complaint (Document # 37) in the Lawsuit.

The Lawsuit Alleges False Representations, Which Were Made By ZBR Employees and Agents, Other Than Bartlett

8. The Lawsuit alleges that false representations were made by Bartlett, GlobalWare Solutions, Inc. (“GWS”) and ZBR, a wholly owned subsidiary of GWS, to the Plaintiffs in order to induce them to sell their shares of Bindco Corporation to GWS, including, without limitation, that:

- a. false representations were made in ZBR’s financial statements;
- b. false statements were made that ZBR’s financial statements were prepared in accordance with generally accepted accounting principals consistently applied;
- c. false statements were made that the ZBR’s Financial Statements fairly presented in all material respects the financial position of ZBR;
- d. false statements were made about ZBR’s contracts and liabilities;
- e. false statements were made about ZBR’s employment agreements; and
- f. other false statements and material omissions were made.

9. The alleged false statements, representations and material omissions upon which Plaintiffs base their claims were made, if at all, either in whole or in part by employees and/or agents of ZBR, other than Bartlett, including ZBR’s in-house and outside accountants and financial advisors.

10. Bartlett denies that he made the false statements, representations and material omissions alleged by the Plaintiffs.

11. In the event that Plaintiffs should receive any judgment against defendant/cross-claim plaintiff, Bartlett, for damages for their alleged injuries, then Bartlett shall be entitled to judgment against the defendant, ZBR, for contribution toward all damages, attorneys fees, and costs awarded to Plaintiffs.

**COUNT I
(Indemnification)**

12. Bartlett hereby repeats and realleges the allegations contained in paragraphs 1 through 11 hereof.
13. Paragraph 6C of Article VI of ZBR's Articles Of Organization provides, in pertinent part:

Each director and each officer elected by the stockholders (including persons elected by directors to fill vacancies in the Board of Directors or in any such offices), and each former director and officer, and the heirs, executors, administrators and assigns of each of them, shall be indemnified by the Corporation against all costs and expenses, including fees and disbursements of counsel and the cost of settlements (other than amounts paid to the Corporation itself), reasonably incurred by or imposed upon him in connection with or arising out of any action, suit or proceeding, civil or criminal, in which he may be involved, or incurred in anticipation of any action, suit or proceeding, by reason of his being or having been an officer or director of the Corporation or by reason of any action alleged to have been taken or omitted by him as a director or officer of the Corporation.

14. Pursuant to Paragraph 6C of Article VI of ZBR's Articles Of Organization, Bartlett is entitled to be indemnified by ZBR against all costs and expenses arising out of the Lawsuit.

**COUNT II
(28 U.S.C. § 2201, Declaratory Judgment Against ZBR)**

15. Bartlett restates and realleges herein the allegations of paragraphs 1 through 14 hereof.
16. An actual controversy exists between Bartlett and ZBR relating to his right to indemnification from ZBR.
17. Bartlett demands that this Court declare the rights and liabilities of defendant/cross-claim plaintiff Bartlett and defendant ZBR with respect to Paragraph 6C of Article VI of ZBR's Articles Of Organization.

**COUNT III
(Contribution)**

18. Bartlett hereby repeats and realleges the allegations contained in paragraphs 1 through 17 hereof.

19. The false statements, representations and material omissions upon which Plaintiffs base their claims were made, if at all, either in whole or in part by employees and/or agents of ZBR, other than Bartlett, including ZBR's in-house and outside accountants and financial advisors.

20. Bartlett denies that he made the false statements and representations alleged by the Plaintiffs.

21. In the event that Bartlett is liable to Plaintiffs, then ZBR, including its employees and agents, is also liable as a joint tortfeasor in relation to the claims made by Plaintiffs against Bartlett.

22. In the event that Plaintiffs should receive any judgment against defendant/cross-claim plaintiff, Bartlett, for damages for their alleged injuries, then Bartlett shall be entitled to judgment against the defendant, ZBR, for contribution toward all damages, attorneys fees, and costs awarded to Plaintiffs.

PRAYERS FOR RELIEF

WHEREFORE, Bartlett respectfully prays for the following relief:

1. Judgment against ZBR on Count I of the Cross-Claim and:
 - a. an award of money damages for all sums that may be adjudged against defendant/third party plaintiff Bartlett in favor of plaintiffs, E.K. Ventures I, David L. Taylor, David L. Taylor and Virginia L. Taylor as Trustees for the Taylor Family Revocable Trust, and Flextronics International, Ltd., together with interest and costs;

b. an award of money damages for all costs, expenses and attorneys fees incurred by defendant/cross-claim plaintiff Bartlett in defense of the Lawsuit, together with interest thereon.

2. Judgment against ZBR on Count II of the Cross-Claim and:

a. an award of money damages for all sums that may be adjudged against defendant/cross-claim plaintiff Bartlett in favor of E.K. Ventures I, David L. Taylor, David L. Taylor and Virginia L. Taylor as Trustees for the Taylor Family Revocable Trust, and Flextronics International, Ltd., together with interest and costs;

b. an award of money damages for all costs, expenses and attorneys fees incurred by defendant/cross-claim plaintiff Bartlett in defense of the Lawsuit, together with interest thereon; and

c. declaration that defendant/third party plaintiff Bartlett is entitled to indemnification from ZBR in accordance with Paragraph 6C of Article VI of ZBR's Articles Of Organization.

3. Judgment against ZBR on Count III of the Cross-Claim for contribution toward any award of money damages adjudged against defendant/cross-claim plaintiff Bartlett in favor of plaintiffs, E.K. Ventures I, David L. Taylor, David L. Taylor and Virginia L. Taylor as Trustees for the Taylor Family Revocable Trust, and Flextronics International, Ltd., together with interest and costs;

4. An award of attorneys' fees, expenses and costs incurred in this action against the defendant ZBR; and

5. Such other and further relief as the Court deems just and proper.

JURY DEMAND

Bartlett demands trial by jury on all issues and claims so triable.

Defendant/Cross-Claims Plaintiff,

JAMES R. BARTLETT

By his attorneys,

Thomas S. Fitzpatrick/BBO #556453
Davis, Malm & D'Agostine, P.C.
One Boston Place, 37th Floor
Boston, MA 02108
617) 367-2500

Dated: December __, 2004